

*Commissioner of Central Excise V Adani Pharmachem P. Ltd.*

*ISSUE*

Whether credit of service tax paid is available in respect of Customs House Agent ('CHA') services rendered in the port to an exporter when export is made on FOB basis or CIF basis.

*CONTENTIONS - - SERVICE TAX DEPARTMENT*

The credit of service tax paid on CHA services is not admissible as Cenvat credit, as the activities at the load port have nothing to do with the manufacture of goods and their clearance, since the clearance has already taken place in case of export goods at the factory gate.

*CONTENTIONS - - ASSESSEE*

The place of removal depends upon the facts as to whether the property or the ownership in the goods has passed to the buyer or not. In case of FOB or CIF sale, the property passes only after the goods are loaded for the purpose of transportation or when the goods have reached the destination, thereby credit for service tax would be admissible in respect of Customs House Agent services rendered in the port.

*CONCLUSION*

CESTAT observed that where the sale is on FOB basis or CIF basis, the place of removal has to be the load port only. Also definition of input service includes any service used for manufacture directly or indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal and as CHA services are required to facilitate clearance of final products from the place of removal i.e. the load port, credit of service tax paid is available in respect of CHA services rendered in the port to the exporter when the export has been made on FOB basis or CIF basis.